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DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Petition of Greycliff Wind Prime, LLC To Set Terms and Conditions for Qualifying Small Power Production Facility Pursuant to M.C.A. § 69-3-603	UTILITY DIVISION DOCKET NO. D2015.6.84

GREYCLIFF WIND PRIME, LLC'S REPLY IN SUPPORT OF MOTION *IN LIMINE*

I. INTRODUCTION.

Petitioner Greycliff Wind Prime, LLC (hereinafter "Greycliff"), acting by and through counsel, hereby files its reply in support of its motion *in limine* to exclude the use of the PowerSimm model in this proceeding. NorthWestern Energy (hereinafter "NWE"), knowing full well that its selection of PowerSimm as the basis for its avoided cost calculation was going to raise the same issues that previously arose *In the Matter of the Petition of NorthWestern Energy for the Commission to set Terms and Conditions of Contract between NorthWestern Energy and Greenfield Wind, LLC,* Docket No. D2014.4.43 (hereinafter "*Greenfield.*"), nonetheless chose to take the same path. For four reasons, the Commission should grant Greycliff's motion *in limine*: (1) NWE's attempt to shield the PowerSimm model from close inspection, if successful, would jeopardize Greycliff's rights to a full and fair hearing under the Montana Administrative

Procedure Act ("MAPA"); (2) violate Greycliff's due process rights under the United States' and Montana Constitutions; (3) would set a precedent that would interfere and place unreasonable impediments in the way of amicable contract formation, which would be a violation of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 824a-3 *et. seq.* ("PURPA"); (4) impermissibly burden Greycliff's right to petition its government for redress.

NWE argues: (1) that Greycliff's motion is not timely; (2) that NWE has not refused to provide access to PowerSimm; and (3) that the Oregon Public Utility Commission's decision in *In re Qwest: Investigation to Review Costs and Establish Prices for Certain Unbundled Network Elements provided by Qwest Corp.,* Pub. Util. Comm. of Ore., Docket No. UM 1025, Order No. 03-533, at 4, 10 (Aug. 28, 2003)(hereinafter "*Qwest")* is not binding on the Montana Public Service Commission (hereinafter "Commission") and is factually distinguishable. None of these arguments have merit. NWE has offered no authority or even compelling reason that its "black box" approach to calculating avoided cost rates is remotely acceptable or consistent with the full rights of a party to equal access to evidence. Instead, NWE's purpose appears to be to disadvantage parties and the Commission by denying them equal access to relevant, critical information, and the Commission must decline to accept NWE's invitation to burden the participation of others before the Commission and to which impede the Commission's inquiry into the truth.

II. ARGUMENT

A. Greycliff's Motion *in Limine* Was Timely

On page 2 and 3 of its response to Greycliff's motion *in limine*, NWE alleges that Greycliff's motion *in limine* is untimely because, according to Procedural Order No. 7346, motions such as this must be filed at "the earliest possible time." NWE does not provide the

reader with the benefit of saying when, precisely, such "earliest possible time" might be, and instead asserts that 21 days after discovery responses are filed is too late. However, the fact that discovery responses were filed does not end the matter as NWE did not answer all of the proposed discovery propounded by Greycliff or the Commission, and in fact, has yet to do so. There are also other outstanding discovery requests which are stayed by Commission order. Greycliff's effort to file this motion *in limine* before the end of the holiday season was both timely and diligent. Greycliff's counsel needed to contact Greycliff regarding direction over the holiday season, and counsel's client was travelling over the holiday season. Greycliff's counsel also needed to confer with its expert regarding whether he could satisfactorily provide an analysis of NWE's avoided cost proposal without direct access to the model. Greycliff's counsel only filed this motion *in limine* once he concluded, after due diligence, that Greycliff needed fair, open, and unfettered access to the PowerSimm model for Greycliff to prepare its case.

In addition, without going into detail, there was some ambiguity about precisely which obligations of the parties would continue following suspension of the procedural schedule. As soon as undersigned counsel had approval from his client, and an opportunity to discuss the matter fully with his expert, he began to draft the motion *in limine*. It should also be noted that NWE requested and received a full 20 days in which to respond to the motion *in limine*, so NWE cannot claim prejudice.

NWE complains that Greycliff's motion is particularly untimely since this is an 180-day proceeding. Greycliff, as the applicant, has the most to lose by the lapse of the time in this proceeding, and it believes this decision is crucial for a full, fair process which is consistent with MAPA and the due process rights afforded every party under the United States and Montana Constitutions. Furthermore, the instant Docket is stayed for at least several more weeks, and a

decision on this issue should be issued prior to the recommencement of the procedural schedule, should that prove necessary. It is difficult to see how a motion *in limine* filed months before a hearing could ever be considered untimely. If Greycliff had filed this motion days before the hearing, putting the Commission and the other parties in the position of jeopardizing their hearing preparation, NWE would have a point. However, NWE has no such point. Greycliff's motion is timely.

B. NWE Is Denying Access to the PowerSimm Model by Charging For it

Make no mistake, by charging anything for access to discovery, NWE is attempting to burden the participation of the parties and the Commission in this proceeding. NWE's customers, rather than its shareholders, are bearing the costs of NWE's participation in this proceeding. In contrast, Greycliff must pay for its attorney and expert fees out of its pocket. Every extra motion necessitated by NWE's unwillingness or inability to provide to Greycliff the very information that forms the basis of NWE's case before the Commission requires Greycliff to dip into increasingly scarce funds to pay for such motions. NWE has very little incentive to cooperate, as is shown by its continuing reliance on the PowerSimm model which it knew, prior to this proceeding, to be proprietary. NWE also knew that it had previously run into problems in the *Greenfield* proceeding regarding its use of this model. NWE could have insisted that Ascend Analytics file a protective order and cooperate with the Commission and the parties to obtain the information. NWE could have used the Commission-approved methodology that has been utilized for years in the QF-1 proceeding. Instead, NWE chose to use a model that it knew would result in the very same problems which arose in *Greenfield.*

NWE argues "Greycliff's Motion makes baseless, conclusory assertions about NorthWestern's actions in this case. These assertions, however, are contradicted by what has

actually transpired." NWE Resp. Br. at 3. NWE argues that its filing "very clearly details how it calculated the proposed avoided cost rate for the Greycliff project. The Prefiled Response Testimonies of Bleau J. LaFave and Luke P. Hansen are transparent and detailed regarding this calculation. See Exhibit__(BJL-1) and Exhibit__(LPH-1)." With all due respect to NWE, nobody knows this is true except NWE. Without access to the PowerSimm model, nobody can test the assumptions, claims, and results proffered by Mr. LaFave and Mr. Hanson. NWE's response is, essentially, "trust us." However, in a contested case proceeding where there is a wide degree of varying opinion on the proper way to calculate avoided costs, trust has nothing to do with it. Parties have the right to test the assumptions, statements, and conclusions of expert witnesses. To not permit such an inquiry, would have serious implications for due process.

MAPA, § 2-4-612 (1)-(5), MCA, details in relevant part what is required in a contested case proceeding:

> (1) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.
> (2) Except as otherwise provided by statute relating directly to an agency, agencies shall be bound by common law and statutory rules of evidence. Objections to evidentiary offers may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.
> (3) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.
> (4) All testimony shall be given under oath or affirmation.
> (5) A party shall have the right to conduct cross-examinations required for a full and true disclosure of facts, including the right to cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence.

Without full and unfettered (i.e., not charged) access to the PowerSimm model, the following procedural defects, at a minimum, will occur in the contested case in this matter. First, Greycliff and the Commission itself will not be afforded an opportunity to "respond and present

evidence and argument" on the PowerSimm model. Second, there is simply no way for anyone to verify the foundation for the PowerSimm model and to verify Mr. LaFave and Mr. Hanson's statements about it. Third, the PowerSimm model, without being fully in evidence, contains a testimonial component that is the equivalent of testimony. Without access to the model, one has no way to verify the model operates in the way represented by Mr. LaFave and Mr. Hanson. Fourth, counsel will have no way to fully prepare for cross examination necessary to "a full and true disclosure of the facts," which necessarily includes the right to "cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence." The "documents" in question, are the testimony of Mr. LaFave and Mr. Hanson. Without a way to verify that the statements made by Mr. LaFave or Mr. Hanson are true, verifiable, and supported by the foundation of the PowerSimm model itself, cross-examination will be reduced to relying on the verity of Mr. LaFave's and Mr. Hanson's statements. Although Greycliff does not doubt the integrity of either Mr. LaFave or Mr. Hanson, the fact remains that one must be able to verify that it is a "full and true disclosure of the facts." While what Mr. LaFave and Mr. Hanson may testify to at hearing may be technically be true, it may be incomplete, misstated, or otherwise less than a full disclosure of all facts, which is required for a contested case hearing to meet the requirements of MAPA.

NWE also argues that it did provide Greycliff with access to the input and output data. However, NWE objected to providing the hourly data that it had used in PowerSimm and this data underpins both Mr. LaFave and Mr. Hanson's testimony in response to GWP-06(a) and (b), and GWP-07. However, NWE's position to date on the use of the hourly data and how important it is, continues to be, at a minimum, opaque.

In particular, a key reason that Greycliff asserts that NWE's avoided cost approach relies upon a black box methodology, is because the explanations of the approach keep shifting. For example, in pre-filed testimony, which will presumably be offered under oath, Mr. Hansen states:

> Northwestern calculated the 25-year levelized energy and capacity rate by modeling the Greycliff wind resource using the PowerSimm™ software. PowerSimm™ models the effect of changes to NorthWestern's energy supply portfolio and allows for analysis of potential additional resources. PowerSimmTM first calculates the hourly dispatch of NorthWestern's supply portfolio and then compares the Greycliff energy production to that supply portfolio."

Prefiled Response Testimony of Luke Hanson, at LPH-4, lines 1-8.

Mr. Hanson does not state in his testimony that Ascend Analytics completed the PowerSimm modeling, or that the data do not even reside at NWE. In fact, none of the NWE avoided cost witnesses make any mention of Ascend Analytics. So, it is surprising to now be told that NWE did not perform the simulations or calculations, but instead relied upon a third party not mentioned in the proceeding and not referenced in the analysis.

Mr. Hanson testifies later:

> [t]he PowerSimmTM modeling output contains the market purchases and sales for the portfolios with and without Greycliff. A comparison of the two portfolios determines, by hour, if Greycliff's estimated production offsets market purchases when NorthWestern's supply portfolio is short or creates excess sales when the portfolio is long. Greycliff's production that offsets purchases is multiplied by the corresponding market purchase price to determine the amount paid to Greycliff. Production that offsets excess sales volumes is multiplied by the corresponding CU4 variable cost during times when the market sales price is higher than the variable cost of CU4 to determine the amount paid to Greycliff. Production from Greycliff during times that the portfolio is long and the market sales price is lower than the variable cost of CU4 is multiplied by the price NorthWestern would receive in the market for energy sold. The hourly values of Greycliff's production are then summed for each year to determine Greycliff's total annual energy and capacity rate. The net present value of these annual rates

> is then calculated and levelized over the average yearly production for the Greycliff project to determine the proposed avoided cost rate for this project.

Prefiled Response Testimony of Luke Hanson, at LPH-5, lines 11-22, LPH-6, lines 1-8.

In this testimony, Mr. Hanson clearly references the hourly data as being important to NWE's determination of avoided cost for Greycliff. For NWE to now claim it did not use the hourly data, is surprising, and potentially misleading.

At minimum, NWE relied upon monthly data that builds from aggregation of hourly simulation data. The calculation of whether NWE's supply portfolio is long or short relative to demand levels is critically important to NWE's application of avoided cost. If NWE is arguing it only used monthly data in that actual calculation, then the foundation of the calculation is still the hourly data. In summary, for NWE to argue the hourly data are not important is akin to telling a home purchaser that he or she need not examine the foundation of the house, because only the rooms above are used. Without the hourly data, or access to PowerSimm, it is not possible for Greycliff to fully examine NWE's avoided cost approach.

In addition, Greycliff continues to have a number of questions about NWE's avoided cost derivation that require hourly level data to reach definitive conclusions. For example, did NWE apply hourly level market prices in the derivation of avoided cost, and if so, what are those values? If not, why not? Because NWE's description of its approach is shifting, it's not possible to fully examine its calculations without the hourly level data. As such, Greycliff's motion should be granted.

Next, NWE contends on pp. 3-4 of its response brief that:

> Given the information provided by NorthWestern, Greycliff cannot rationally claim that NorthWestern's calculation is a "black box" and that it objected to producing the backup data used to support its calculation. Contrary to this claim, NorthWestern provided the requested information to Greycliff. Greycliff can

> analyze in detail NorthWestern's modeling inputs and outputs, and therefore, NorthWestern's proposed avoided cost rate is not a "black box" calculation. Nothing in NWE's response brief renders PowerSimm anything less than a black box.

Until the parties and the Commission have full, equal, and unfettered (meaning "free") access to the PowerSimm model, NWE's PowerSimm model calculations are little more than an assertion that the model's calculations are trustworthy without any way of verifying those calculations. And again, with due respect to NWE, it does not get to decide what is full and fair disclosure to third parties. NWE's attempt to limit equal access to the parties and the Commission regarding its avoided cost calculations is simply an end run on the rights of parties who appear before the Commission, and it damages the Commission's ability to reach a full, fair, and accurate discernment of what NWE's avoided cost properly is under the law.

NWE next argues on page 4 of its response brief it will only cost $3,000 dollars for Greycliff to obtain full access to the PowerSimm model, and that should be good enough. Greycliff respectfully disagrees. Regardless of the cost, a party may not withhold material and crucial evidence in a contested proceeding by requiring another party to pay for it. NWE utilized the PowerSimm model, and it has the burden of proof to demonstrate that the model is accurate, reliable, and that its results are verifiable and trustworthy. Greycliff did not choose the model, and should not have to pay for NWE's decision to again utilize it after the *Greenfield* proceeding apprised NWE of numerous concerns that the Commission staff and the Commissioners themselves had regarding NWE's reliance on the model. Greycliff should not be obligated to pay for NWE's mistake.

In *Hydrodynamics*, et al, the Federal Energy Regulatory Commission ("FERC") ruled that:

> The Montana Rule [ARM § 38.5.1902(50] creates, as well, a practical disincentive to amicable contract formation because a utility may refuse to

> negotiate with a QF at all, and yet the Montana Rule precludes any eventual contract formation where no competitive solicitation is held. Such obstacles to the formation of a legally enforceable obligation were found unreasonable by the Commission in *Grouse Creek*, and are equally unreasonable here and contrary to the express goal of PURPA to "encourage" QF development.

146 FERC ¶ 61,193, P. 33 (2014).

FERC's ruling in both *Grouse Creek* and *Hydrodynamics* is that a state commission may not impose burdens on a QF that interfere with amicable contract formation. If both parties, the QF and the utility, do not have equal access to avoided cost information which is a necessary predicate to negotiations, amicable contract formation is impeded in an impermissible way. If the Commission accepts NWE's position on PowerSimm it may be failing in its duty under PURPA to "encourage" QF development.

NWE next argues:

> Contrary to Greycliff's claims, one can surmise that an entity willing to spend $40-50 million to build a project is a most certainly a sophisticated party. As such, Greycliff cannot logically claim that it is entitled to free access, or hat a $3,000 fee to gain access is excessive or onerous. NorthWestern and its customers should not have to pay to help a QF determine if its project is viable. Neither the law nor the facts of this case support Greycliff's claim for free access.

NWE Resp. Br. at 4.

First, the law supports Greycliff on this issue. MAPA, the due process clauses of the United States and Montana Constitutions, as well as FERC's pronouncements in *Hydrodynamics* and *Grouse Creek* support Greycliff's contention that NWE may not impermissibly burden QFs by utilizing a black box and then charging for access to that box.

Second, Greycliff is not self-financing this project but will rely on financing – financing it will only obtain if this contested case process produces an avoided cost that is calculated consistently with the law. Third, NWE's position is that given that Greycliff has already spent

considerable pre-development funds in pursuit of its project, an additional $3,000 is not much of a burden. However, NWE has no earthly idea whether $3,000 is a burden to Greycliff, particularly after requiring Greycliff to go to considerable lengths to obtain information that NWE knew would be an issue after the *Greenfield* proceeding. Furthermore, NWE's cynical suggestion that Greycliff should spend even more pre-development money in order to gain unfettered, free access to avoided cost information to which it is legally entitled would, if accepted by the Commission, violate Greycliff's due process and MAPA rights. In contrast, NWE bears no expense of the decisions it makes not to fully cooperate with qualifying facilities in calculating its avoided costs.

Finally, Greycliff can logically and legally claim it is entitled to unburdened access to any data or information in this proceeding. To do otherwise impedes Greycliff's right to petition its government for redress of grievances. The First Amendment to the United States Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." In similar fashion, Article II, section 7, of the Montana Constitution provides: "No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts."

If the Commission decides to adopt NWE's position that it may charge for discovery, and Greycliff can carry its burden to demonstrate a first amendment violation, the Commission would be subject by the Court's to strict scrutiny of its decision, and the obligation would then

shift to the Commission to demonstrate that the burden on Greycliff's speech "furthers a compelling interest and is narrowly tailored to achieve that interest." *Citizens United v. FEC*, 558 U.S. 310, 130 S. Ct. 876, 898, 175 L. Ed. 2d 753, 782 (U.S. 2010)(quoting *Fed. Election Comm'n v. Wis. Right to Life*, 551 U.S. 449, 464, 127 S. Ct. 2652, 168 L. Ed. 2d 329 (2007)).

The position advocated for by NWE that parties pay for discovery would, if adopted by the Commission, impermissibly burden Greycliff's right to petition the government for redress of its grievances. Specifically, Greycliff has a right to petition the government to seek a full, fair, open and non-discriminatory access to every piece of information. To do otherwise, would violate Greycliff's free speech rights under the United States and Montana constitutions.

Finally, NWE admits that it disagreed with the Commission's decision in *Greenfield* that allowed Greenfield access to the PowerSimm model if Greenfield paid the first $10,000 for access to the PowerSimm model. Regardless, Greycliff does not agree that any payment is consistent with the Commission's obligations under the due process clauses of the United States and Montana Constitutions, MAPA, and Greycliff's first amendment rights under the federal and state constitution. Greycliff believes the Commission's decision to require Greenfield to pay for PowerSimm was legally incorrect, and furthermore, grossly unfair.

C. Greycliff Believes the Oregon Public Utility Commission's *Qwest* Decision is Relevant, Applicable, and Persuasive Authority

Greycliff agrees with NWE that the Oregon Public Utility Commission's *Qwest* decision is not binding legal authority on this Commission. However, NWE's attempts to distinguish the Oregon Commission's decision are unpersuasive. First, despite what NWE claims, the *Qwest* decision may have started out as a discovery dispute over whether Qwest was entitled to data inputs to a proprietary model utilized by AT&T and WorldCom, but the Oregon Commission's policy pronouncements were not limited to resolving a discovery dispute. Second, there is an

ongoing discovery dispute in this case which is yet to be resolved, and which directly relates to inputs utilized by NWE in the PowerSimm model. Third, NWE's argument that $100,000 cost proposed by AT&T and WorldCom for access to the HAI model had anything to do with the Oregon Commission's decision appears incorrect. The Oregon Commission's decision did not, in any way, rest on those grounds:

> *The public is ill served by allowing a party to foreclose discovery of crucial information simply because another entity was used to develop that information. Such a policy would seriously constrain the fact finding ability of the Commission and prevent us from making decisions based upon a full and complete record.* As the ALJ recognized, the Commission has adopted a protective order process designed to safeguard confidential information. *There is no reason why AT&T and WorldCom could not have made arrangements with TNS to have the customer location data and clustering algorithm released pursuant to the protective order.*
>
> *AT&T and WorldCom's proposal to have Qwest pay to obtain the customer location materials from TNS is also contrary to the public interest. As the ALJ emphasized, such a policy would disadvantage parties without significant financial resources and would seriously limit the fact gathering capability of the Commission Staff*

Qwest at p. 8 (emphasis added).

In response to arguments by AT&T and WorldCom that they were being unfairly sanctioned, the Oregon PUC responded:

> *The flaw in this argument is that AT&T and WorldCom have a fundamental obligation to make essential elements of their model available to the Commission and other parties for review and analysis. Without such information, the Commission does not have an adequate basis upon which to judge the merits of the model. While there is certainly nothing improper about retaining a third party to develop model inputs, it does not relieve AT&T and WorldCom of their duty to produce data underlying their model.* As emphasized above, AT&T and WorldCom should have known that every significant element of the HAI model would be subject to discovery and should have taken this into account when they made arrangements with TNS to develop the customer location data and clustering algorithm. *AT&T and WorldCom cannot rely on their arrangement with TNS to shield critical data from discovery and still expect the Commission to accord substantial weight to the results of the cost model.*
>
> *In fact, AT&T and WorldCom are in a predicament of their own making. When they retained TNS to develop the customer location/clustering data, they knew*

> *that TNS had refused to disclose the same data in other jurisdictions.* AT&T and WorldCom explain that they decided to use TNS only after Qwest refused to produce its actual customer location data. They further add that they chose not to seek an order compelling Qwest to respond because of their concern about delay. This may be true, but the fact remains that AT&T and WorldCom opted to use TNS despite knowledge of its nondisclosure policy. They now blame Qwest for their situation, but, *in reality, they made a strategic error by assuming they would not have to divulge the customer location data and clustering algorithm in this proceeding. Any sanctions AT&T and WorldCom incur for failure to comply with the June 11 ruling will not constitute undue prejudice*.

Id. at pp. 8-9 (emphasis added).

The Oregon PUC concluded:

> AT&T and WorldCom cannot prevent discovery of relevant information central to the outcome of this proceeding simply because they chose to have the data developed by a third party. Second, we find that it is contrary to the public interest to require parties to Commission proceedings (and potentially the Commission itself) to pay for discovery.

Id. at pp. 9-10.

Thus, the Oregon Commission's decision did not in any way turn on the amount that AT&T and WorldCom proposed to charge Qwest. Rather, it turned on the fact that the Oregon Commission rightly found that AT&T and WorldCom knew that the model was proprietary and failed to make arrangements with parties and the Commission for full unfettered access. This is the same situation present here. Furthermore, whether $100,000 was more or less burdensome to Qwest (at the time, a large national company) than $3,000 is to Greycliff is a matter of conjecture on NWE's part. More importantly, it misses the point. NWE cannot resist inquiry into the inputs or the PowerSimm model simply because they chose to have their avoided cost data developed by a third party, Ascend Analytics. More importantly, the Oregon Commission found that it is contrary to the public interest to "require parties to Commission proceedings (and potentially the Commission itself) to pay for discovery." The Commission did not say that $100,000 was too much a burden; instead, it ruled that requiring parties to pay for discovery was

against the public interest. The relevant material facts in this case dictate the same result reached by the Oregon Commission. The Oregon Commission has already plowed the ground and addressed the issues raised by the parties here, and found that Qwest was entitled to free access to the date utilized in the model developed by a third party. The Oregon Commission's reasoning is sound, consistent with the law, and is persuasive.

III. CONCLUSION

In conclusion, none of NWE's arguments against Greycliff's motion *in limine* have merit. Greycliff's motion was not untimely as it was filed before the completion of discovery and discovery disputes, and was filed as soon as practicable during the holiday season months before a potential hearing. Second, NWE's argument that it has not denied access to the PowerSimm model is unavailing because it still is proposing to charge Greycliff for access to the model. Third, the Oregon Commission's decision in *Qwest* is persuasive. Finally, there are compelling legal reasons that burdening a party's right to full participation in a contested case proceeding is unlawful, including: (1) a party's right to due process under the law, the right to full participation and disclosure of all evidence and the right to prepare for cross examination under MAPA; (2) the Commission's PURPA obligation to not place unreasonable impediments in the way of amicable contract formation, (3) a party's free speech rights to petition its government for redress under the United States and Montana constitutions. The Commission should either grant Greycliff's motion *in limine* or, alternatively, require NWE to provide free and unfettered access to the PowerSimm model. Greycliff, it's attorneys and experts will sign a protective order if required by Ascend Analytics.

RESPECTFULLY SUBMITTED this 26th day of January, 2016.

UDA LAW FIRM, PC

By: _____

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Attorney for Greycliff Wind Prime, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on this 26th day of January, 2016 upon the following by first class mail postage pre-paid:

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I hereby certify an original was e-filed, and ten copies of the foregoing were hand-delivered to the following:

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